

U.S. DEPARTMENT OF AGRICULTURE
WASHINGTON, D.C. 20250

DEPARTMENTAL NOTICE		Number: 4030-001
SUBJECT: Section 508 Implementation -- Interim Guidance	DATE: August 15, 2001	
	OPI: Program, Planning and Management Division, Office of the Chief Information Officer	
CODIFICATION/EXPIRATION; One year from the date of issuance.		

1 PURPOSE

The purpose of this Notice is to provide interim guidance to USDA agencies and staff offices regarding the implementation of Section 508 of the Rehabilitation Act of 1973, 29 U.S.C. § 794d, as amended. The interim guidance in Appendix A should be used until the final guidance is issued.

2 INQUIRIES

Direct all questions concerning this Notice to the Program, Planning and Management Division, Office of the Chief Information Officer, in Room 447-W, Jamie L. Whitten Federal Building or call (202) 720-6275.

3 BACKGROUND

The Rehabilitation Act of 1973 ("Rehabilitation Act"), 29 U.S.C. § 701 et seq., was enacted, in part, to prohibit discrimination based on disability in Federal employment and in the access to Federal programs or activities. Recognizing the need to further protect persons with disabilities from discrimination, Congress enacted the Americans with Disabilities Act, 42 U.S.C. § 12111 et seq., to prohibit discrimination on the basis of disability by employers, State and county agencies, public accommodations, commercial facilities, and transportation services.

The Rehabilitation Act was amended in 1998, Pub. L. 105-220, Title IV, in part to address nondiscrimination on the basis of disability by the Federal Government and to expand and strengthen the technology access requirements of Section 508. Section 508 requires Federal departments and agencies to provide comparable electronic and information technology ("EIT") for Federal employees with disabilities and members of the general public with disabilities seeking Federal information available through the new technologies.

On December 21, 2000, the Architectural and Transportation Barriers Compliance Board (Access Board) published the final standards for electronic and information technology accessibility in the *Federal Register*. Section 508 of the Rehabilitation Act Amendments requires that when Federal departments or

agencies develop, procure, maintain, or use electronic and information technology, they shall ensure that the technology is accessible to people with disabilities, unless an undue burden would be imposed on the department or agency. Section 508 addresses various means for disseminating information, including computers, software, and electronic office equipment. It applies to, but is not solely focused on, Federal pages on the Internet or the World Wide Web. It does not apply to web pages of private industry. The Board's standards became part of the Federal Acquisition Regulation (FAR) on April 25, 2001.

-END-

APPENDIX A

USDA SECTION 508 INTERIM GUIDANCE

Federal Agency Requirements

Section 508 requires that when Federal Agencies develop, procure, maintain or use electronic and information technology, they must ensure access to people with disabilities. Comparable access is not required if it would impose an undue burden to the Federal Agency. This is consistent with language used in the Americans with Disability Act (ADA) and other civil rights legislation, where the term ‘undue burden’ has been defined as “significant difficulty or expense.” However, the Agency must document and explain why meeting the standards would pose an undue burden for a given procurement action, and must still provide individuals with disabilities access to the information or data that is affected in an alternative method.

Electronic And Information Technology (EIT) Accessibility

An EIT system is accessible to people with disabilities if it can be used in a variety of ways that do not depend on a single sense or ability. Examples: A system that provides output only in audio format would not be accessible to people with hearing impairments - this system could be made accessible by adding closed captions. Likewise, a system that only uses mouse actions for navigation would not be accessible to people who cannot use a mouse because of dexterity or visual impairment – this system could be made accessible by enabling keyboard controls, such as using Function Keys, to allow mouse-independent navigation.

The intent of the technical and functional performance criteria in the final rule is to ensure that Federal employees and members of the public who have disabilities get access to and use of information and services that is comparable to the access and use available to non-disabled Federal employees and members of the public. The final standards developed by the Access Board explain the detailed technical and functional performance criteria that Determines whether a technology product or system is “accessible.” They can be found at <http://www.access-board.gov/sec508/508standards.htm>. The performance based standards focus on functional capabilities covered by

technologies under Section 508 organized into the following six categories listed in the table below.

ELECTRONIC AND INFORMATION TECHNOLOGY PROCURED, DEVELOPED, MAINTAINED, OR USED BY A FEDERAL AGENCY	
<ul style="list-style-type: none"> • Software Applications & Operating Systems • Web information and other Applications, including Internet and Intranet services • Telecommunication Products 	<ul style="list-style-type: none"> • Video and Multi-Media Products (Including closed Captions) • Desktop and Portable computers • Self-contained closed products such as Information kiosks, calculators, fax machines, and photocopiers.

The Scope of Section 508

Section 508 requires that when Federal departments and agencies develop, procure, maintain or use electronic and information technology, they must ensure that such technology is accessible to persons with disabilities by providing comparable access to and use of the information and data available. However, where providing comparable EIT access would constitute an undue burden, i.e., “a significant difficulty or expense,” on the agency, the agency shall provide the sought after information by an alternative means of access. The agency must provide documentation explaining why the procurement of a comparable EIT constitutes an undue burden.

Section 508 focuses on the overall accessibility of electronic and information systems, but not to providing accommodations at individual worksites. Agencies must ensure that employees with disabilities have access to and use of data and information comparable to that afforded non-disabled employees. Accessibility of work locations and the provision of assistive technology for disabled employees are not covered under Section 508, but other sections of the Rehabilitation Act.

Section 508 is technology-centric, requiring adaptive equipment to provide accessible solutions. In contrast, Section 501 of the Rehabilitation Act requires Federal agencies to provide reasonable accommodations for individuals with disabilities; it generally covers individual worksites, but not overall technology systems. Section 504 prohibits discrimination based on disability in federally funded and conducted programs or activities.

Federal Agency Procurement Responsibilities

- Section 508 applies to all Federal agencies and departments when they develop, procure, maintain or use electronic and information technology. The Federal Acquisition Regulations (FAR) Final Rule in compliance with Section 508 was published on April 25, 2001, amending the FAR to incorporate the Section 508 accessibility standards. These standards shall be made part of the Statement of Work in all USDA contracts, solicitations, purchase orders and task orders for electronic and information technology products procured, developed, maintained, or used by a Federal Agency. Other than indefinite-quantity contracts the rule applies to these procurement options on or after the effective date of June 25, 2001. Please link to <http://www.usda.gov/procurement/policy/advisories.html> and follow procedures in AGAR Advisory Number 34.
- Beginning on June 25, 2001, all active procurements must include the new 508 EIT standards. Technical evaluations will factor in the proposal's ability to satisfy the greatest number of the standards. It is the responsibility of requiring official under Section 508 of the Rehabilitation Act as amended to ensure adherence with these standards.
- For a specific procurement action, USDA agencies and staff offices must continue to provide persons with disabilities access to or use of the information or data that is affected. Regulatory exceptions include the situation where a Federal department or agency demonstrates that the technology accessibility standards would impose an undue burden.
- Each agency or staff office must identify which standards would apply to the procurements using the Access Board's EIT Accessibility Standards found at 36 CFR 1194, which provides an exception if compliance would present an undue burden.
- When acquiring commercially available items, USDA must comply with the Section 508 standards by purchasing services and supplies that are available in the commercial marketplace that provide the greatest level of immediate and future accessibility available without presenting a demonstrable undue burden on the agency.
- USDA is not expected to certify products as being Section 508 compliant. The General Services Administration plans to publish a list to inform Federal agencies of contractors whose products meet the criteria in compliance with the accessibility standards.

Applicability to Federal Web Sites

- Section 508 requires that any electronic and information technology developed, procured, maintained, and used by the Federal government be accessible to Federal employees with disabilities and members of the general public with disabilities. This includes web-based applications and other Internet and Intranet information and services provided at Federal web sites and web pages.
- Federal web sites and web pages shall meet the Section 508 standards established by the Access Board and shall comply with Section 504 of the Rehabilitation Act which prohibits discrimination based on disability in federally funded and conducted programs or activities.
- USDA is striving to make its web sites and web pages accessible to all Federal employees with disabilities and all members of the general public with disabilities who seek access to and use of the information and data contained on these Federal sites. As of June 21, 2001, all new web pages brought on-line or which have undergone a “major” update must comply with the Section 508 Standards, unless doing so imposes an undue burden that can be fully documented.
- All USDA programs and information contained on existing web pages i.e., those in existence before June 21, 2001, shall be made available to members of the public and federal employees in a way that does not discriminate against people with disabilities, consistent with our obligations under section 504 of the Rehabilitation Act. The four “To Do’s” for existing web pages are inventory, prioritize, update, and retire.
- As of June 21, 2001, newly created web pages should follow the Access Board’s web accessibility provisions. For existing web pages on the Internet or Intranet sites, organizations should make the best use of their resources to ensure that all USDA programs contained on these pages are available in a nondiscriminatory manner. The pages should be modified to comply with the Section 508 web accessibility provisions (36 CFR 1194.22), to the extent that resources allow beginning with the most popular.
- For existing web pages that are not modified, agencies and staff offices should post accurate contact information (e-mail address, toll-free telephone number) so that individuals with a disability may request the information on an inaccessible page to be made available in an alternate format. Program offices may wish to use this opportunity to “retire” old pages that are not frequently used or that contain inaccurate and dated material.
- Agencies and staff offices are directed to prioritize existing and heavily accessed pages for testing to determine compliance. It is not the intent to “Shut Down” web sites but to prioritize and convert those sites that are heavily used and to retire those sites that have minimal access.

ADMINISTRATIVE COMPLAINTS

- As of June 21, 2001, if a Federal agency procures electronic and information technology that does not comply with the standards developed by the Access Board, it is subject to administrative complaints and private lawsuits by employees and members of the public. However, Section 508 does not authorize complaints or lawsuits to retrofit electronic and information technology products.
- Agencies receiving administrative complaints must apply the complaint procedures established to implement Section 504 of the Rehabilitation Act for resolving allegations of discrimination. In private lawsuits, the rights and remedies of the parties are the same as in litigation under Section 504 of the Rehabilitation Act as it applies to federally conducted programs.

EXEMPTIONS TO SECTION 508

- Micro-purchases and credit card purchases under \$2,500 are exempt until January 1, 2003;
- EIT acquired by a contractor that is incidental to a contract;
- EIT located in spaces frequented only by service personnel for maintenance, repair or occasional monitoring of equipment; and
- EIT that would impose an undue burden on the agency [(FAR 39.204 9e)].

Additionally, by statute, Section 508 does not apply to national security systems.

ACHIEVING RESPONSIVENESS TO SECTION 508

USDA Section 508 Coordination Committee – With leadership from OCIO, USDA established a Section 508 Coordination Team composed of representatives from the staff offices and mission areas. The Committee's primary focus centers on identifying accessibility issues and providing recommendations on compliance with the Access Board standards.

Short Term Compliance by Federal Agencies with Section 508

USDA responded to a self-evaluation requested by the Department of Justice, which has oversight responsibility for Section 508. The USDA evaluated the top 20 web pages by component agency or staff office for accessibility totaling 33 sites. The self-evaluation was conducted in April 2001. As a result of this requirement, several USDA entities have taken steps to make their top pages Section 508 compliant on or before June 21, 2001.

Compliance Deadline

The Act is to be implemented by all Federal agencies as of June 21, 2001. The effective date of the final Federal Acquisition Regulation (FAR) rule on electronic and information technology procurements must be compliant by June 25, 2001.

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